

1 J. Giardina - Direct 20
2 exactly like this sketch or words to that effect.
3 I seem to recall that from the testimony. I could
4 stand corrected. My only question is, do you
5 recall any such conversation or any such
6 references?

7 THE WITNESS: No sir, it wasn't given to me in
8 the interview or in the statement.

9 THE COURT: Anything further?

10 MR. SCHWEGLER: No, your Honor. Detective
11 Giardina, please.

12 THE CLERK: Thank you. Please be seated.
13 Please state your name for the record, spelling
14 your last name.

15 J A M E S G I A R D I N A, being duly called and
16 sworn as a witness on behalf of the People, took the stand
17 and testified as follows:

18 THE CLERK: City, town or village in which you
19 reside?

20 THE WITNESS: Amherst, New York.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. SCHWEGLER:

24 Q. Sir, you're a detective in the Buffalo Police
25 Department Homicide Squad?

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2 A. Yes sir.

3 Q. How long have you been working homicide?

4 A. Approximately four years.

5 Q. And how long have you been on the police force
6 all told?

7 A. Approximately thirty years.

8 Q. Detective, let me direct your attention back to
9 April 17th of 1998. Were you working with Detective
10 Stambach, the gentleman who just testified here regarding an
11 investigation or part of an investigation into the homicide
12 of Paul Pope?

13 A. Yes sir.

14 Q. And on the 17th of April, 1998, in the early
15 morning hours, did you and he interview a young black woman
16 by the name of Wymeka Anderson, known as Pumpkin?

17 A. Yes, I did.

18 Q. Where did that occur, sir?

19 A. In the Homicide Bureau office interview room.

20 Q. I show you what's been marked as People's Hearing
21 Exhibit 3. Can you identify that exhibit for us, please?

22 A. Yes, I can. It's the statement we took from Miss
23 Anderson.

24 Q. That's a copy, correct?

25 A. It's a copy, yes.

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2 Q. All right. How long were you in Miss Anderson's
3 presence that morning, Detective?

4 A. A total of a couple hours at least. Two hours.

5 Q. And in the course of that contact with Miss
6 Anderson, she obviously gave you a written statement,
7 correct?

8 A. Yes.

9 Q. Okay. Did she make any statement whatsoever
10 concerning any other homicide?

11 A. No.

12 Q. In particular, did she make any comment, even
13 remote comment regarding the homicide of Tamika Means and the
14 upcoming trial of Cory Epps for that murder?

15 A. No.

16 Q. You heard no such comment? Did any other
17 detective make any comment to you that that woman, referring
18 to Miss Anderson, just told us information about another
19 case?

20 A. No.

21 Q. When you had completed your contact with Miss
22 Anderson, what happened with her if you recall?

23 A. I don't recall. We took her back home as far as
24 I can recall.

25 Q. Okay. Are you aware that Miss Anderson has made

1 J. Giardina - Cross 23

2 a claim that she made certain statements in the Homicide
3 Office relative to the homicide of Tamika Means?

4 A. Just recently.

5 Q. Did any statement occur that in your mind could
6 be concerned with any other homicide at all made in your
7 presence or told to you by another officer or any such thing
8 in April of 1998?

9 A. No sir.

10 MR. SCHWEGLER: Nothing further. Thank you.

11 CROSS EXAMINATION

12 BY MR. COTTER:

13 Q. Detective Giardina, now you made no handwritten
14 notes of the interview with Miss Anderson on April 17th,
15 1998, correct?

16 A. No, I did not.

17 Q. And you made no tape recording --

18 A. No.

19 Q. -- of the interview, correct?

20 A. No.

21 Q. And did you ever issue a P-73 or any other type
22 of memorandum or report relative to your interview of her on
23 April 17th, '98?

24 A. No, I did not.

25 Q. What was the next day that you saw Wymeka

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2 Anderson after April 17th, 1998?

3 A. I don't recall seeing her at all.

4 Q. Now can you tell me approximately when it was you
5 became aware that Wymeka Anderson was making statements
6 relative to Russell Montgomery's murdering of Tamika Means?

7 A. Just when I first got called to come to a
8 hearing.

9 Q. And do you recall when that was?

10 A. A few weeks ago.

11 Q. Prior to that few weeks ago, can I assume or am I
12 correct in assuming that somebody from the District
13 Attorney's Office contacted you?

14 A. I got a subpoena and I asked what it was
15 regarding. I was told.

16 Q. And prior to a few weeks ago you had no knowledge
17 at all of the connection or claimed connection between the
18 cases of the People v. Russell Montgomery and People v. Cory
19 Epps?

20 A. No.

21 Q. Now when you became aware that these -- that
22 there was a claimed connection between the two cases, did you
23 issue a P-73?

24 A. No, I did not.

25 Q. Now do you recall back -- I'm going to be turning

1 J. Giardina - Cross 25
2 your attention back to April 17th of '98. Do you recall at
3 what point you and Detective Stambach left the interview
4 room?

5 A. Not exactly. Sometime after nine thirty when the
6 statement was finished. I don't recall exactly what time it
7 was.

8 Q. At any time during the statement, do you recall
9 when you and Detective Stambach left the interview room?

10 A. During the statement, is that the question?

11 Q. During the statement.

12 A. No, I don't recall. I don't recall leaving at
13 all.

14 Q. Now do you recall -- as you testify here today,
15 do you remember what address Miss Anderson lived at in April
16 of 1998?

17 A. No, just by this statement. 239 Dewey Street.

18 Q. Okay. Now --

19 THE COURT: Is that where she was returned
20 following the statement?

21 THE WITNESS: I believe so, yes.

22 THE COURT: Were you at all involved in the
23 investigation of Mr. Epps in the homicide of Tamika
24 Means?

25 THE WITNESS: Other than taking the statement,

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2 very little involvement.

3 THE COURT: What statement?

4 THE WITNESS: The statement from -- assisting
5 Detective Stambach in the statement of Wymeka
6 Anderson.

7 THE COURT: No, no. No, I'm asking whether or
8 not you were in any way involved in the
9 investigation and prosecution of Cory Epps --

10 THE WITNESS: Oh, no sir.

11 THE COURT: -- with respect to the alleged
12 shooting death of Tamika Means on April 26th, 1997?

13 THE WITNESS: No sir, I was not.

14 THE COURT: So your involvement was solely in
15 connection with the taking of this statement from
16 Wymeka Anderson in connection with the prosecution
17 ultimately of Russell Montgomery on the death of
18 Paul Pope?

19 THE WITNESS: Yes.

20 THE COURT: And your activities did not at
21 any time extend into the investigation of Mr. Epps
22 for which he's been convicted dating back to
23 the shooting death of Tamika Means on May 26th of
24 '97?

25 THE WITNESS: Right.

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2 (Whereupon, Defendant's Exhibit 8 was marked
3 for identification.)

4 Q. Detective, I'm pretty sure I asked you but not
5 positive. You don't remember when it was the next time you
6 met or came across Wymeka Anderson --

7 A. Right.

8 Q. -- after 4/17, is that correct?

9 A. Right.

10 Q. Now I'm going to show you two pages of documents
11 within a series and ask you if you recognize your signature
12 on the second page.

13 A. Yes sir.

14 Q. Okay. And that was signed about August 30th,
15 2000?

16 A. Doesn't say when it was signed.

17 Q. It says sworn to before me. Beneath your
18 signature, sir.

19 A. Okay. August 30th, 2000. Right.

20 Q. Okay. And this is an affidavit you submitted in
21 respect to this case, correct?

22 A. Yes sir.

23 Q. That was ten months ago?

24 A. Approximately.

25 Q. More than a few weeks ago?

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2 A. Right.

3 Q. Now if I could have it back, please. I believe
4 you testified that you had no handwritten notes or any other
5 notes?

6 A. That I can recall.

7 Q. That you can recall?

8 A. Right.

9 Q. All right. Prior to testifying here today, did
10 you review the Russell Montgomery homicide file maintained by
11 the Buffalo Police Department?

12 A. No, I did not.

13 Q. Did you look for any notes?

14 A. No.

15 Q. Do you ever make handwritten notes during the
16 course of an interview?

17 A. Yes.

18 Q. Sometimes you do, sometimes you don't?

19 A. Most of the times I do.

20 Q. Most of the times you do?

21 A. Yes.

22 Q. Do you have a specific recollection that you did
23 not do it in this case?

24 A. I don't recall. Detective Stambach, as far as I
25 could recall, did the interview, I assisted him. He usually,

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if he was doing the statement, he would have taken the statement, he would have taken the handwritten notes.

Q. He would have taken the handwritten notes?

A. Right, if there were any.

Q. Do you recall him taking handwritten notes?

A. No, I don't recall.

Q. What time did you go to 239 Dewey back on April 16th, 1998?

A. I don't recall the exact time. Sometime prior to the seven thirty a.m.

Q. On the 17th.

A. On the 17th?

Q. Sometime late at night?

A. No, earlier. Seven thirty a.m., the statement. Sometime prior to that as far as I can recall.

Q. On the 17th you took the statement at seven thirty in the morning?

A. Right.

Q. On the 16th, you're at Wymeka Anderson's house?

A. As far as I can recall. I really -- I recall picking her up, I just don't recall the exact time and --

Q. Now showing you again the portions of Defendant's 8, it's your 8/30/2000 affidavit. I direct your attention to paragraph six if I can.

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2 A. Yes sir.

3 Q. Okay. You wrote there that if Anderson disclosed
4 such information on April 17th, 2000 -- 1998, you would have
5 written it down, correct?

6 A. Yes.

7 Q. Okay. What if she had told you on May 1st, '98,
8 would you have written it down then?

9 A. I'm sure I would have.

10 Q. July 3rd, '98, would you have written it down
11 then?

12 A. I'm sure I would have.

13 Q. Okay. Now, were you present with any other
14 homicide detectives when Wymeka Anderson disclosed the fact
15 that she had authored a letter that she had submitted to
16 Mr. Epps' attorney?

17 A. No.

18 Q. You were not present?

19 A. No.

20 Q. Do you have any knowledge as to who was present?

21 A. No.

22 Q. Now do you recall who did the typing of Miss
23 Anderson's statement?

24 A. Detective Stambach.

25 Q. You're positive?

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2 A. I'm almost sure.

3 Q. All right. And is it fair to assume that the
4 process by which the statement was taken was a series of
5 questions asked by either you or Stambach?

6 A. Yes.

7 Q. And then typing would occur?

8 A. Right.

9 Q. And then another question would be asked?

10 A. Right.

11 Q. More typing?

12 A. Right.

13 Q. Now do you recall Ms. Anderson mentioning that
14 Russell Montgomery looks like the Identi-sketch or Identi-kit
15 that was used in the Tamika Means homicide?

16 A. No, I don't.

17 Q. Not at all?

18 A. No.

19 THE COURT: Did you know Russell Montgomery at
20 the point when you were speaking to Miss Anderson?
21 Was that somebody known to you?

22 THE WITNESS: No.

23 Q. At the time you took the statement from Miss
24 Anderson back in April of '98, Russell Montgomery was a
25 suspect in Paul Pope's killing, correct?

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2 A. I don't recall. No, I don't recall knowing it at

3 that time.

4 Q. Do you recall telling Miss Anderson that the

5 information she had was just hearsay?

6 A. No.

7 Q. She ever tell you anything -- mention anything

8 about Tamika Means?

9 A. No.

10 Q. Ever indicate to you that Russell Montgomery had

11 killed someone other than Paul Pope?

12 A. No.

13 Q. Now ultimately at some point in time either on

14 August of 2000 or May, 2001, you became aware that there was

15 an alleged connection between the death of Tamika Means and

16 the death of Paul Pope, is that fair to say?

17 A. That there was a -- yes, I would say so.

18 Q. When you became aware, did you issue any kind of

19 P-73 or other memorandum?

20 A. No.

21 Q. Even though that would be your practice?

22 A. Right.

23 MR. SCHWEGLER: Objection, your Honor. That

24 was not his testimony.

25 THE COURT: Well, I'll sustain. He's

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indicated I think that sometimes they prepare the P-73s, sometimes their partner does, sometimes they do. I guess the bottom line, Officer Giardina, is, you did participate in the taking of the statement of Wymeka Anderson on or about the 17th. Both you and your partner deny that she -- that she at any time made any reference to any claimed knowledge by hearsay or otherwise of the murder of Tamika Means and who may have been responsible for it, correct?

THE WITNESS: Yes sir.

THE COURT: Did you testify or participate in the prosecution of Russell Montgomery?

THE WITNESS: No.

THE COURT: So other than taking this statement, did you engage in any other investigative activity that bore upon Russell Montgomery?

THE WITNESS: No sir.

THE COURT: So yours was the singular activity of the day, so to speak, of taking the statement from Tamika Means?

THE WITNESS: Yes sir.

THE COURT: Strike that, not Tamika Means.

THE WITNESS: I'm sorry.

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THE COURT: But rather Wymeka Anderson.

THE WITNESS: Right. Yes sir.

BY MR. COTTER:

Q. Hang on a second, Detective. Isn't it true that three days after you took Wymeka Anderson's statement, you took a statement from Melvin Calhoun?

A. I assisted in other statements, yes.

Q. And Wymeka Anderson brought Melvin Calhoun down to the Buffalo police headquarters, correct?

A. I don't recall how that came about.

Q. Didn't you see Miss Anderson outside the Homicide Bureau on the third floor at 74 Franklin Street three days later?

A. I don't recall.

Q. But you remember taking the statement from Mr. Calhoun?

A. Yes. I know there was a statement taken from him.

Q. By you?

A. I assisted, yes.

MR. COTTER: Nothing further, Judge.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. SCHWEGLER:

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2 Q. I just want to clear one thing up, your Honor.

3 As far as -- I would ask you to take a look at Exhibit 3, and
4 would you note for us the beginning and ending times of that
5 statement?

6 A. Starting time was seven thirty a.m., and it ended
7 at eight twenty a.m. on the 17th.

8 Q. All right.

9 A. 17th of 1998.

10 Q. If you stated that the statement ended at nine
11 thirty a few moments ago, did you misspeak?

12 A. Yes.

13 MR. SCHWEGLER: That's all. Thank you.

14 THE COURT: Did you and Stambach go pick her
15 up on Dewey, or was she at the Homicide Squad when
16 you reported for duty?

17 THE WITNESS: As far as I can recall, we
18 picked her up on Dewey.

19 THE COURT: As a prospective witness in
20 connection with the investigation into the death of
21 Paul Pope, right?

22 THE WITNESS: Yes.

23 THE COURT: And you were never -- I'll
24 withdraw. Okay. I have nothing further.

25 MR. COTTER: Could I just --

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THE COURT: Sure.

RE CROSS EXAMINATION

BY MR. COTTER:

Q. To clear up on that point. Detective, I take you back to your August 30th, 2000 affidavit. I'm going to direct your attention to paragraph number two. Do you see where in there that you state that you went to 239 Dewey?

A. Yes.

Q. And you picked up Wymeka Anderson?

A. Yes.

Q. And you brought her down to the bureau?

A. Yes.

MR. COTTER: Okay. Judge, just for the record, what these are are the affidavits that were submitted in the People's second supplemental. I believe it was submitted to the Court on or about September 1st of 2000. Simply for the ease of use.

THE COURT: All right. Well, from what I can gather, there's not any basic contention in the various statements, either within the documentation or within the testimony. What I have so far is the two homicide detectives engaged in the interviewing of a witness on April 17th in which questions were asked relative to Miss Wymeka Anderson's knowledge

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of who, if anyone, killed Paul Pope, and both disclaim any reference, or any claim that she made mention of the homicide of Tamika Means. That's in contrast to Miss Anderson's testimony and I understand that. That's what we're here for is to resolving of that conflict. Anything further from Officer Giardina?

MR. SCHWEGLER: Not for the People, your Honor.

THE COURT: Okay. Thank you, sir.

THE WITNESS: Thanks.

MR. SCHWEGLER: Sergeant Costantino.

THE CLERK: Thank you. Please be seated.

Please state your name for the record, spelling your last name.

A N T H O N Y C O S T A N T I N O, being duly called and sworn as a witness on behalf of the People, took the stand and testified as follows:

THE CLERK: City, town or village in which you reside?

THE WITNESS: Buffalo.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SCHWEGLER: